

Number: **200818019**
Release Date: 5/2/2008
Index Number: 2601.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-132939-07
Date:
January 14, 2008

In Re:

Legend:

Decedent	=
Daughter	=
Trust	=
State	=
State Law 1	=
State Law 2	=
State Law 3	=
State Law 4	=
State Law 5	=
State Law 6	=
State Law 7	=
Date 1	=

Dear _____:

This is in response to your letter received on September 11, 2007, and prior correspondence, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a proposed modification of a trust.

The facts submitted and the representations made are as follows. On a date prior to September 25, 1985, Decedent died. Pursuant to the terms of Decedent's Will, Trust was established for the benefit of Daughter.

Article Sixth, paragraph (c)(2) of the Will provides that the trustees have the discretion to distribute income to Daughter during her lifetime. The trustees also have the discretion to use all or any portion of Trust's income for the benefit of Daughter's children during Daughter's lifetime.

Under Article Sixth, paragraph (c)(4), upon Daughter's death, Trust will continue until the youngest of Daughter's surviving children attain age 21, at which time Trust will terminate and the trust estate will be equally distributed among Daughter's surviving children.

Under State Law 1, the parties interested in a trust may resolve matters through written agreements in a nonjudicial binding procedure. Under State Law 2, such agreements may be filed with the court having jurisdiction over the trust, and upon filing, the agreement has the effect of a final court order binding on all persons interested in the trust.

The trustees and the beneficiaries of Trust entered into a nonjudicial binding agreement (Agreement) under which Trust will be modified to facilitate the administration and investments Trust. Pursuant to State Law 3 and State Law 4, Daughter's children, as virtual representatives of their issue, entered into Agreement for their issue. Agreement becomes effective upon the receipt of a favorable ruling from the Internal Revenue Service.

Agreement provides that Article Sixth, paragraph (c)(2) of the Will will be modified to provide that the trustees have the discretionary authority to distribute to Daughter and her children a unitrust amount instead of Trust's income. State Law 5 authorizes the conversion of an interest in income into a unitrust amount. The unitrust amount will be equal to the greater of: (i) the annual income of Trust; or (ii) an amount equal to four and one-half percent of the average fair market value of Trust valued as of the close of the last business day of the five preceding years (or such lesser number of years as are available for the first five years starting as of Date 1). The unitrust amount and adjustments thereto are to be calculated without regard to the fair market value of certain assets held by Trust for which there is no established public market. State Law 5 defines the term "unitrust distribution" as equaling four percent and the term "payout percentage" to mean the net fair market value of the trust's assets averaged over the lesser of the three preceding years, or the period during which the trust has been in existence.

In this case, Agreement provides for four and one-half percent and the five preceding years. However, State Law 5 also provides that the trustee or beneficiary of a trust may petition the court to select a payout percentage different than four percent. Under State Law 6, nothing in State Law 5 restricts the application of State Law 1 to issues that arise under trust and may be resolved nonjudicially. Further, under State Law 7, the parties to Agreement may exercise their rights to agree to a five-year period and to exclude assets for which there is no established market value.

It has been represented that no additions have been made to Trust since Decedent's death.

Trustees are requesting a ruling that the proposed modification to Trust as described in Agreement will not result in a shift of a beneficial interest to a lower generation beneficiary, and, therefore, will not affect the status of Trust as exempt from the GST tax.

Law and Analysis:

Section 2601 imposes a tax on every generation-skipping transfer.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the GST tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii) (B) or (C) (relating to property includible in the grantor's gross estate under §§ 2038 and 2042).

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraphs (b)(4)(i)(A), (B), or (C) of this subsection) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13 if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(E), Example 8, considers a situation where a trust that is otherwise exempt from the GST tax provides that trust income is payable to A for life and, upon A's death, the remainder is to pass to A's issue, per stirpes. In 2002, the

appropriate local court approves a modification to the trust that converts A's income interest into the right to receive the greater of the entire income of the trust or a fixed percentage of the trust assets valued annually (unitrust interest) to be paid each year to A for life. The example concludes that the modification does not result in a shift in a beneficial interest to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. Rather, the modification can only operate to increase the amount distributable to A and decrease the amount distributable to A's issue. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13.

In this case, Trust is an irrevocable trust that was established prior to September 25, 1985. It is represented that no additions were made to Trust after September 25, 1985. Consequently, Trust is currently exempt from the GST tax.

The proposed modification of Trust will not result in a shift of any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the conversion of the income interest into a unitrust interest. Further, the proposed modification will not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in Trust, prior to the modification. Accordingly, based on the facts submitted and representations made, we conclude that the proposed modification of Trust will not affect the status of Trust as exempt from the GST tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lorraine Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes